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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212056
Party	Defendant Buzztable, Inc
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Submission	Motion to Suspend for Civil Action
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Date	11/01/2013
Attachments	Applicant's Consent Motion to Suspend.pdf(524362 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NTN Buzztime, Inc.,)	Opposition No. 91212056
)	
Opposer,)	
)	
v.)	APPLICANT’S CONSENT MOTION
)	TO SUSPEND
Buzztable, Inc.,)	
)	
Applicant.)	Serial No. 85834904
)	
)	

Pursuant to Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 510.02(a), Buzztable, Inc. (“Applicant”), through its undersigned attorneys, respectfully requests that the Board suspend the Opposition pending the outcome of the lawsuit that has been filed in the United States District Court for the Southern District of California by Opposer NTN Buzztime, Inc. (“Opposer”), Case No. 13-CV-1897-MMA-WMC. A copy of the lawsuit complaint is attached hereto as Exhibit A. This lawsuit involves parties and issues that are common to this Opposition.

Opposer consented to this motion on November 1, 2013.

Dated: November 1, 2013

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /John L. Slafsky/
John L. Slafsky
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Hillary I. Schroeder

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EXHIBIT A

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8
9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
11

12 NTN BUZZTIME, INC., a Delaware
corporation,

13 Plaintiff,

14 v.

15 BUZZTABLE, INC., a Delaware
corporation,

16 Defendant.
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Case No. '13CV1897 MMAWMC

COMPLAINT FOR:

**(1) FEDERAL TRADEMARK
INFRINGEMENT;**

**(2) FEDERAL UNFAIR
COMPETITION (FALSE
DESIGNATION);**

**(3) FEDERAL TRADEMARK
DILUTION;**

**(4) CALIFORNIA UNFAIR
BUSINESS PRACTICES;**

**(5) UNFAIR COMPETITION BY
INFRINGEMENT OF COMMON
LAW RIGHTS; AND**

**(6) INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE**

AND

DEMAND FOR JURY TRIAL

I.

PARTIES

1. NTN Buzztime, Inc. (“NTN Buzztime”) is a Delaware corporation with its principal place of business in Carlsbad, California.

2. Defendant BuzzTable, Inc. (“BuzzTable”) is a Delaware corporation with its principal place of business in New York, New York.

II.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331 and 1338, in that it arises under the trademark laws of the United States, 15 U.S.C. § 1051, *et seq.*

4. This Court has subject matter jurisdiction over the unfair competition claims pursuant to 28 U.S.C. § 1338(b) in that those claims are jointed with a substantial and related claim under the trademark laws. This Court further has supplemental or pendent jurisdiction over all other claims alleged in this action pursuant to 28 U.S.C. § 1367(a) in that those claims are so related to the claims within this Court’s original jurisdiction that they form part of the same case or controversy.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. 1391(b) and (c) in that BuzzTable solicits business in this judicial district and thus is subject to personal jurisdiction here, and because its acts that have caused and continue to cause damage to NTN Buzztime have occurred and are continuing to occur in this judicial district.

III.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

NTN Buzztime’s Registered Trademarks

6. NTN Buzztime is the owner of the registered trademark “BUZZTIME,” registration number 2460367, which the United States Patent and Trademark Office

1 (“USPTO”) registered on the Principal Register on June 12, 2001.

2 7. NTN Buzztime is the owner of the registered trademark,
3 “BUZZTIME,” registration number 3294791, which the USPTO registered on the
4 Principal Register on September 18, 2007.

5 8. NTN Buzztime is the owner of the registered trademark,
6 “BUZZPOINTS,” registration number 3424104, which the USPTO registered on the
7 Principal Register on May 6, 2008.

8 9. NTN Buzztime is the owner of the registered trademark, “BUZZTIME
9 TRENDALICIOUS TRIVIA,” registration number 3866821, which the USPTO
10 registered on the Principal Register on October 26, 2010.

11 10. NTN Buzztime is the owner of the registered trademark,
12 “BUZZTIME,” registration number 3985217, which the USPTO registered on the
13 Principal Register on June 28, 2011.

14 11. NTN Buzztime is the owner of the registered trademark,
15 “BUZZTIME’S SMARTEST BAR,” registration number 4128569, which the
16 USPTO registered on the Principal Register on April 17, 2012.

17 12. NTN Buzztime is the owner of the registered trademark, “BUZZTIME
18 ENTERTAINMENT,” registration number 4241950, which the USPTO registered
19 on the Principal Register on November 13, 2012.

20 13. NTN Buzztime continues to own all of these registered trademarks,
21 each of which is active and in good standing.

22 14. NTN Buzztime also owns the unregistered trademarks
23 “BUZZREPORT” and “FOLLOW US FOR THE BUZZ.”

24 15. Each of these registered and unregistered trademarks, in one respect or
25 another, is related to hospitality (specifically restaurants and bars) and entertainment
26 services, including providing non-downloadable interactive games via interactive
27 television, telephone and wireless devices on global computer networks and via live
28 hosted events; for the production of cable and network television programs featuring

1 interactive games; distribution of cable and network television programs featuring
2 interactive games for others; marketing, entertainment, advertising, and customer
3 loyalty applications on tablets and other mobile devices; equipment for playing a
4 plug and play game, namely, videogame machines for use with televisions, video
5 game interactive remote control units, video game cartridges and interactive video
6 game programs; and providing a frequent user rewards program in connection with
7 interactive games played via satellite, cable, telephone, internet, a global computer
8 network or other interactive devices in the nature of prize giveaways.

9 16. One or more of NTN Buzztime's registered marks is incontestable
10 under 15 U.S.C. § 1065.

11 **NTN Buzztime's Use and Promotion of its Trademarks**

12 17. NTN Buzztime uses these registered and unregistered marks in its
13 business, which includes marketing services through interactive game content for
14 hospitality venues, including restaurants and bars, that offer the games to their
15 patrons. NTN Buzztime's business includes providing an interactive entertainment
16 network that helps such hospitality venues that subscribe to NTN Buzztime's
17 network to acquire, engage and retain their patrons.

18 18. NTN Buzztime's target market includes restaurants and bars and their
19 patrons and it has mobile applications and other entertainment specifically marketed
20 to those patrons.

21 19. NTN Buzztime generates revenues primarily by charging subscription
22 fees to its network subscribers for its service, and from the sale of advertising aired
23 on in-venue screens as well as in conjunction with customized games. NTN
24 Buzztime's games are currently available in more than 3,400 locations throughout
25 the United States and Canada.

26 20. NTN Buzztime has, at least since 2000, used its federal and common-
27 law trademarks continuously in every forum available to identify its products and
28 services. It has spent, and continues to spend, substantial effort and money

1 advertising and promoting its trademarks continuously in this jurisdiction and
2 throughout the United States in interstate commerce.

3 21. NTN Buzztime has invested its resources in promoting its trademarks
4 so that they identify it and its products and services as distinct from those of others.

5 22. NTN Buzztime has used its trademarks broadly and its presence is
6 well-known in its segment of the entertainment industry. NTN Buzztime's
7 trademarks are widely recognized throughout the United States and elsewhere and
8 are distinct and famous in association with the entertainment services it provides.

9 23. The use and presence of NTN Buzztime's trademarks in connection
10 with its products and services and advertising tells the public that NTN Buzztime
11 developed and provided those products or services. The consuming public has come
12 to associate NTN Buzztime's trademarks with the entertainment services that it
13 provides.

14 24. Based on its federal trademark registrations and NTN Buzztime's
15 extensive use of its trademarks, NTN Buzztime owns the exclusive right to use its
16 registered trademarks in connection with the entertainment products and services it
17 provides.

18 **BuzzTable's Infringement of NTN Buzztime's Trademarks.**

19 25. BuzzTable is using, and has been using in commerce, the infringing
20 mark, "BUZZTABLE." BuzzTable claims it develops computer applications that
21 allow restaurants to offer table buzzers and loyalty cards by way of smartphones.

22 26. BuzzTable claims that, since its founding, it was created to unite
23 restaurants with their loyal guests in "an entirely new way."

24 27. BuzzTable claims that it "builds products that help restaurants create
25 the ultimate guest experience" and that it "strives to develop technologies that bring
26 guests closer to the restaurants they love, just like the food that brings us together at
27 a table."

28 ///

1 28. BuzzTable claims that it is trying to “redefine” human interaction by
2 means of the technology that it deploys.

3 29. On January 29, 2013, BuzzTable applied to the USPTO for a
4 trademark/service mark for “BUZZTABLE” for downloadable computer software in
5 the nature of a mobile application for displaying, finding, messaging, locating and
6 interacting with other users in places so that users can organize, tag, store,
7 aggregate, message, annotate, comment, share, search and interact with data, video,
8 audio, photographs, text, graphics, other user’s user-created content and user-
9 supplied content for sharing and transmission.

10 30. BuzzTable’s application’s breadth demonstrates its intention to bring
11 NTN Buzztime’s uses of its marks and the products and services that NTN
12 Buzztime markets with its marks under the “BUZZTABLE” mark.

13 31. Thus BuzzTable’s mark, “BUZZTABLE,” is substantially similar to
14 NTN Buzztime’s marks and creates substantially the same commercial impression.

15 32. The products and services for which BuzzTable uses its mark are
16 identical or closely related to the products and services for which NTN Buzztime
17 uses or has registered its marks.

18 33. BuzzTable’s own statements demonstrate that it uses the confusingly
19 similar “BUZZTABLE” mark to compete directly with NTN Buzztime’s
20 “BUZZTIME” trademark.

21 34. BuzzTable is using its infringing mark to offer direct access to products
22 and services in the same channels of commerce as those NTN Buzztime uses.

23 35. BuzzTable is attempting to create confusion by its use of the infringing
24 mark, “BUZZTABLE” and its attempt to divert NTN Buzztime’s business to itself.

25 36. NTN Buzztime has not consented to or authorized BuzzTable to use the
26 mark in question and BuzzTable’s use of the “BUZZTABLE” mark dilutes NTN
27 Buzztime’s mark distinctive qualities.

28 / / /

1 37. NTN Buzztime is informed and believes that BuzzTable's application
2 for and use of the infringing mark, "BUZZTABLE," is to capitalize on the goodwill
3 of NTN Buzztime's marks.

4 38. BuzzTable began to use the infringing "BUZZTABLE" mark after
5 NTN Buzztime's marks were already famous and distinctive.

6 39. BuzzTable's unauthorized use of the "BUZZTABLE" mark unjustly
7 enriches BuzzTable and is damaging NTN Buzztime's business reputation.

8 40. BuzzTable uses the infringing mark "BUZZTABLE" to identify its
9 products and services in interstate commerce, to its benefit and to NTN Buzztime's
10 detriment.

11 41. The infringing mark, "BUZZTABLE", creates, and in fact has created,
12 the likelihood of confusion, mistake or deception in the mind of the average
13 consumer about the source of the products and services offered.

14 42. BuzzTable's use of the infringing mark, "BUZZTABLE," for products
15 and services specifically marketed to restaurants, bars and their patrons, including
16 mobile applications, creates a strong likelihood of confusion.

17 43. As a result of BuzzTable's conduct, NTN Buzztime has incurred, and
18 continues to incur, damages consisting, among other things, of the diminution of the
19 value of, and the goodwill associated with, its marks, and lost profits.

20 44. BuzzTable threatens to continue the alleged acts, and unless restrained
21 and enjoined, will do so to NTN Buzztime's irreparable damage. NTN Buzztime's
22 remedy at law is, at least in part, inadequate to compensate it for all the injuries
23 threatened by BuzzTable's conduct, and it is therefore entitled to injunctive relief.

24 **IV.**

25 **FIRST CLAIM FOR RELIEF**

26 **(Trademark Infringement Under the Lanham Act, 15 U.S.C. 1114)**

27 45. NTN Buzztime repeats and realleges paragraphs 1-44, above, as though
28 fully set forth.

1 46. BuzzTable has used or is using in interstate commerce the mark,
2 “BUZZTABLE,” which infringes NTN Buzztime’s marks and describes NTN
3 Buzztime’s products and services. BuzzTable’s infringement uses NTN Buzztime’s
4 marks in violation of 15 U.S.C. § 1114.

5 47. By engaging in the conduct set forth above, BuzzTable has infringed
6 NTN Buzztime’s marks in interstate commerce.

7 48. BuzzTable’s use of NTN Buzztime’s marks for their products and
8 services is without NTN Buzztime’s permission or authority, and constitutes a
9 reproduction, copying, counterfeiting and colorable imitation of NTN Buzztime’s
10 marks in a manner likely to cause confusion and/or mistake and to deceive.

11 49. NTN Buzztime is informed and believes that BuzzTable committed the
12 infringing acts with full knowledge of and disregard for NTN Buzztime’s rights, and
13 with the intent to cause confusion and/or mistake and to deceive.

14 50. In the mark, “BUZZTABLE,” BuzzTable is using NTN Buzztime’s
15 similar marks to cause initial interest confusion, and to divert users away from NTN
16 Buzztime and its product and services.

17 51. BuzzTable’s use of NTN Buzztime’s marks has created a likelihood of
18 confusion among consumers who may falsely believe that NTN Buzztime associates
19 with BuzzTable’s business or approves of BuzzTable’s services or commercial
20 activities.

21 52. As a result of BuzzTable’s acts, NTN Buzztime has suffered and will
22 continue to suffer damage to its business, reputation and good will and the loss of
23 sales and profits NTN Buzztime would have made but for BuzzTable’s acts. NTN
24 Buzztime is entitled to injunctive relief and an award of actual and treble damages,
25 BuzzTable’s profits, and recovery of NTN Buzztime’s costs of suit and attorneys’
26 fees.

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28 ///

1 53. BuzzTable threatens to continue the alleged acts, and unless restrained
2 and enjoined, will do so to NTN Buzztime's irreparable damage. NTN Buzztime's
3 remedy at law is, at least in part, inadequate to compensate it for all the injuries
4 threatened by BuzzTable's conduct, and it is therefore entitled to injunctive relief.

5 V.

6 **SECOND CLAIM FOR RELIEF**

7 **(Unfair Competition Under the Lanham Act, 15 U.S.C. 1125(a))**

8 54. NTN Buzztime repeats and realleges paragraphs 1-53, above, as though
9 fully set forth.

10 55. BuzzTable has caused its products and services to enter into interstate
11 commerce with the representation that they are affiliated, connected or associated
12 with NTN Buzztime's marks.

13 56. BuzzTable's unauthorized use of the marks constitutes a false
14 designation of origin and/or a false or misleading description or representation of
15 fact that is likely to cause confusion, to cause mistake and to deceive as to the
16 affiliation, connection or association of BuzzTable with NTN Buzztime with respect
17 to the origin, sponsorship, association or approval of BuzzTable's products and
18 services.

19 57. BuzzTable's use in commerce of NTN Buzztime's marks in connection
20 with products or services with a false designation of origin, a false or misleading
21 description and representation of fact that is likely to cause confusion, to cause
22 mistake and to deceive with respect to the affiliation, connection or association of
23 BuzzTable with NTN Buzztime with respect to the origin, sponsorship, association
24 or approval of BuzzTable's products and services constitutes unfair competition
25 under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

26 58. As a result of BuzzTable's alleged acts, NTN Buzztime has suffered
27 and will continue to suffer damage to its business, reputation and good will and the
28 loss of sales and profits NTN Buzztime would have made but for BuzzTable's acts.

1 NTN Buzztime is entitled to an award of actual and treble damages, BuzzTable's
2 profits, and to recovery of NTN Buzztime's costs of suit and attorneys' fees.

3 59. BuzzTable threatens to continue the alleged acts, and unless restrained
4 and enjoined, will do so to NTN Buzztime's irreparable damage. NTN Buzztime's
5 remedy at law is, at least in part, inadequate to compensate it for all the injuries
6 threatened by BuzzTable's conduct, and it is therefore entitled to injunctive relief.

7 VI.

8 **THIRD CLAIM FOR RELIEF**

9 **(Trademark Dilution Under the Federal Trademark Dilution Act, 15 U.S.C.**

10 **1125(c))**

11 60. NTN Buzztime repeats and realleges paragraphs 1-59, above, as though
12 fully set forth.

13 61. BuzzTable has made commercial use of NTN Buzztime's marks in
14 connection with products and services that BuzzTable has provided in interstate
15 commerce. BuzzTable's acts violate Lanham Act § 43(c), 15 U.S.C. § 1125(c) in
16 that they have caused dilution of the distinctive quality of NTN Buzztime's marks,
17 all to NTN Buzztime's irreparable injury and damage.

18 62. BuzzTable's acts have lessened the capacity of NTN Buzztime's
19 famous marks to identify and distinguish NTN Buzztime's products and services.

20 63. BuzzTable's acts have blurred the unique association that existed
21 between NTN Buzztime's marks and the products and services it provides, markets
22 and distributes under those marks.

23 64. NTN Buzztime's marks are distinctive and famous. The
24 "BUZZTIME" mark is inherently strong and distinctive, has long been used in
25 connection with the products and services NTN Buzztime provides, has long been
26 the subject of substantial advertising and promotion, has been used and advertised
27 throughout the United States, is widely recognized by consumers and those in the
28 trade, is in substantially exclusive use, and is registered with the USPTO.

1 all the injuries threatened by BuzzTable's conduct, and it is therefore entitled to
2 injunctive relief.

3 **VIII.**

4 **FIFTH CLAIM FOR RELIEF**

5 **(Unfair Competition by Infringement of Common Law Rights)**

6 74. NTN Buzztime repeats and realleges paragraphs 1-73, above, as though
7 fully set forth.

8 75. BuzzTable's acts constitute unfair competition and an infringement of
9 NTN Buzztime's common law rights in its marks.

10 76. Due both to the incontestability of NTN Buzztime's registered marks as
11 set forth above and NTN Buzztime's continuous use of its marks to identify its
12 products and services and to distinguish them from those made and sold by others
13 including those in BuzzTable's market area, NTN Buzztime's marks have a
14 secondary and distinctive trademark meaning to purchasers in BuzzTable's market
15 area.

16 77. The marks have come to indicate products and services originating only
17 with NTN Buzztime. As a result of this association by purchasers of the marks with
18 NTN Buzztime, BuzzTable's use of the marks is likely to cause confusion among
19 these purchasers.

20 78. BuzzTable has infringed NTN Buzztime's marks as alleged with the
21 intent to deceive the public into believing that products and services provided by
22 BuzzTable are made by, approved by, sponsored by, associated with, or affiliated
23 with NTN Buzztime.

24 79. NTN Buzztime is informed and believes that BuzzTable's alleged acts
25 were committed with the intention of passing off and palming off BuzzTable's
26 products and services as those of NTN Buzztime, and with the intent to deceive and
27 defraud the public.

28 ///

80. As a result of BuzzTable's alleged acts, NTN Buzztime has suffered and will continue to suffer damage to its business, reputation and good will and the loss of sales and profits NTN Buzztime would have made but for BuzzTable's acts.

81. BuzzTable threatens to continue the alleged acts, and unless restrained and enjoined, will do so to NTN Buzztime's irreparable damage. NTN Buzztime's remedy at law is, at least in part, inadequate to compensate it for all the injuries threatened by BuzzTable's conduct, and is therefore entitled to injunctive relief.

IX.

SIXTH CLAIM FOR RELIEF

(Interference with Prospective Economic Advantage)

82. NTN Buzztime repeats and realleges paragraphs 1-81, above, as though fully set forth.

83. At all times relevant to this complaint, BuzzTable was aware of the prospective economic advantages that would accrue to NTN Buzztime through the use of its marks.

84. NTN Buzztime is informed and believes that BuzzTable has intentionally caused disruption in these relationships through the acts alleged above.

85. BuzzTable's alleged acts constitute wrongful, intentional interferences with NTN Buzztime's prospective economic advantages.

86. As a result of BuzzTable's intentional interference with NTN Buzztime's prospective economic advantage, NTN Buzztime has been damaged in an amount that it will prove at trial.

87. NTN Buzztime alleges on information and belief that BuzzTable's acts in interfering with its prospective economic advantage were fraudulent, malicious, and oppressive and constitute despicable conduct in conscious disregard of NTN Buzztime's rights, and are intended to cause NTN Buzztime harm. NTN Buzztime is therefore entitled to an award of punitive damages under California Civil Code Section 3294.

1 88. BuzzTable threatens to continue the alleged acts, and unless restrained
2 and enjoined, will do so to NTN Buzztime's irreparable damage. NTN Buzztime's
3 remedy at law is, at least in part, inadequate to compensate it fully for all the injuries
4 threatened by BuzzTable's conduct, and it is therefore entitled to injunctive relief.

5 **X.**

6 **PRAYER**

7 WHEREFORE, NTN Buzztime prays for judgment against BuzzTable as
8 follows:

- 9 1. For preliminary and permanent injunctive relief;
10 2. For compensatory damages according to proof, including BuzzTable's
11 profits;
12 3. For restitution;
13 4. For treble damages and/or such enhanced damages allowed by law;
14 5. For punitive damages;
15 6. For costs of suit;
16 7. For attorneys' fees allowed by law; and
17 8. For such other relief as this Court deems just and proper.

18
19 DATED: August 14, 2013

SOLOMON WARD SEIDENWURM &
SMITH, LLP

20
21
22 By: s/ Edward J. McIntyre

23 EDWARD J. MCINTYRE

24 STEPHEN L. SCHREINER

25 LEAH S. STRICKLAND

26 Attorneys for NTN BuzzTime, Inc.
27
28

DEMAND FOR JURY TRIAL

NTN Buzztime, Inc. hereby demands a jury for all claims triable to a jury.

DATED: August 14, 2013

SOLOMON WARD SEIDENWURM &
SMITH, LLP

By: s/ Edward J. McIntyre

EDWARD J. MCINTYRE

STEPHEN L. SCHREINER

LEAH S. STRICKLAND

Attorneys for NTN Buzztime, Inc.

CERTIFICATE OF SERVICE BY MAIL

I, Shelie Plourde, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence would be deposited with the United States Postal Service on this date.

On this date, I served **APPLICANT'S CONSENT MOTION TO SUSPEND** on each person listed below, by placing the document described above in an envelope addressed as indicated below, which I sealed. I placed the envelope for collection and mailing with the United States Postal Service on this day, following ordinary business practices at Wilson Sonsini Goodrich & Rosati.

Warner R. Broaddus
NTN Buzztime Inc.
200 Rutherford Rd., #200
Carlsbad, CA 92008

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on November 1, 2013.

/s/ Shelie Plourde

Shelie Plourde